IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.262 of 2004

Mr.Ibrahim Abdul Shaikh .. Appellant
(Orig.Deft)

V/s

1.Smt.Laxmibai Mallapa Patil

2. Shri Baburao Mallapa Patil

3. Shri Vasant Mallapa Patil
(Expired)

4. Shri Chadnrakant Mallapa Patil

5. Shri Deepak Mallapa Patil

6. Sou. Dropadi Balasaheb Visapure

7. Mr.Mangal Popatrao Kupade

8. Sou. Mahadevi Dattatraya Kupawade..Respondents
(Orig.Plffs)

Ms. Lalita Panchakshri for Appellant

Mr.V.D.Borwankar for Respondent

CORAM:S.R.SATHE,J.

DATED:21st March 2006

**ORAL JUDGMENT** :-

1. The Appellant, original defendant, tenant in Regular Civil suit No.43 of 1999 has preferred this appeal against the judgment and order passed by the Court of District Judge, Pune in Civil Appeal No.806 of 2002, whereby decree for eviction passed against the defendant was confirmed and appeal was dismissed. For the sake of convenience hereafter the parties shall be referred to as the plaintiffs and defendant.

2. The brief facts giving rise to this second appeal

are as under :

. The suit premises described in detail in para 1 of the plaint was leased out by plaintiffs to defendant as monthly tenant and agreement of lease was executed in the year 1991 for 11 months. The lease was renewed from time to time and lastly lease agreement was executed on 1-11-1996 for a period of 11 months. However, subsequently lease was not renewed and tenant continued in possession of the suit premises. As the suit premises was in dilapidated condition and required by the landlords notice dated 7-1-1999 was issued by the plaintiffs to defendant and his tenancy was terminated by end of 31=-1-1999 and he was called upon to hand over the possession. In spite of the receipt of notice the defendant did not vacate the suit premises hence plaintiff filed the suit for eviction.

3. The defendant filed written statement and opposed the suit claim. Apart from other contentions the defendant contended that his monthly tenancy commences from 17th of each month and not from first day of each

month as alleged by the plaintiffs as he took the premises from plaintiff on 17-12-1989. He therefore, submitted that notice terminating his tenancy, issued by the plaintiffs is not legal and valid and as such plaintiffs' suit is liable to be dismissed.

4. On these pleadings the learned trial Judge framed issues. After considering the evidence adduced by both the parties the learned trial Judge came to the conclusion that initial agreement of lease executed on 17-12-1989 had come to an end and thereafter the defendant's month of tenancy was from first day of each month ending with last day of month. Accordingly he held that the suit notice is legal and valid and therefore decreed the suit in favour of the plaintiffs.

5. Being aggrieved by that order, the defendant filed first appeal. The first Appellate Court also held that the month of tenancy was from first day of each month and notice issued by the plaintiffs was legal and valid. He therefore confirmed the decree.

6. The defendant tenant has challenged the above mentioned order in the present second appeal.

7. I have heard both the learned Advocates finally at admission stage. The substantial question of law which falls for consideration in this appeal is whether the finding recorded by the first appellate court that month of tenancy commences from first day of each month is against the evidence on record and perverse, in view of the fact that initial agreement of lease was executed on 17-12-1989. My answer is in the negative for the following reasons.

8. In this appeal before me the learned Advocate for the defendant has urged only two points. Firstly, she submitted that courts below have erred in holding that defendant's month of tenancy commences from the first day of the month. According to her Courts ought to have held that it commenced from 17th of the month. Secondly, she canvassed before me that in the suit notice plaintiffs had urged that defendant's tenancy is terminated by the end of month. So, according to her even if it is assumed that tenancy commenced from first day, the tenancy was not properly terminated and it ought to have been terminated by the end of first day of next of month as per provisions of Section 111 of Transfer of Property Act. She, therefore, submitted that suit notice is not legal and valid and and as such the appeal be allowed and the plaintiffs'

suit be dismissed. As against this learned advocate for the plaintiffs supported the judgment and order passed by the learned District Judge.

9. It is not in dispute that initially lease deed dated 17-12-1989 was executed and defendant took possession of the suit premises on that day. As a result of this the defendant has taken the contention that his month of tenancy commences from 17th of each month. As against this it is the case of the plaintiffs that his month of tenancy commences from first day of each month though initial lease deed (Exh.43) is executed on 17-12-1989. From the perusal of the same it is very clear that the defendant took possession of the suit premises on that day i.e. on 17th December 1989. However, if we peruse the other contents of the said deed, it appears that month of tenancy was to commence from first day of the month. It is specifically mentioned in the said deed that the said agreement is applicable from December 1989 (_____ _____). It obviously means that the month of tenancy was to be treated as commenced from first day of December 1989. It is also specifically mentioned in the said deed that monthly rent is to be paid every month between

1st to 5th day of the month. So, from this stipulation it appears that both the parties to the agreement had proceeded holding that month of tenancy commences from the first day of the month.

10. It is an admitted fact that in the suit notice the plaintiffs had specifically averred that defendant's month of tenancy commences from the first day of the month and ends with last day of the month. The defendant has clearly admitted in his cross examination that in his reply he did not challenge the above mentioned statement of the plaintiffs and had not even told to his Advocate that his month of tenancy commences from 17th of the month and not from first day of the month. So, this also suggests that defendant was fully aware that month of tenancy commences from first day of each month. It appears that only with a view to take advantage of some technical point the defendant has taken the contention that his month of tenancy commences from 17th day of month. This is obviously an after thought of the defendant.

11. There is another important piece of evidence which also negatives the contention of the defendant. It is an admitted fact that the premises in question

were in fact taken on lease even prior to the lease deed dated 17-12-1989. the plaintiffs have produced one lease deed dated 1-1-1989 at Exh.36. The defendant has admitted the same. Not only that but he has also admitted in his cross examination that his tenancy agreement commenced from 1-1-1989 and expired on 30-11-1989. So, it appears that as no next agreement or lease deed was not executed on the first day of December but it was executed on 17-12-1989, the defendant is trying to take advantage of the said fact for contending that his month of tenancy starts from 17th. However, the evidence on record clearly goes to show that defendant's month of tenancy commences from first day of month. The finding recorded by the courts below on this point is legal and correct and by no stretch of imagination it can be said to be perverse. So there is no substance] in the argument advanced by the learned Advocate for the defendant in this behalf and plaintiffs' suit cannot be dismissed on the ground that notice issued under Section 106 of Transfer of Property Act is not legal and valid.

12. The learned Advocate for the defendant tenant submitted that in the suit notice it was mentioned that defendant's tenancy is terminated by the end of the month. However, if the tenancy is to commence

from first day of the month then according to her it ought to have been terminated by the first day of the next month.

13. The learned Advocate for the defendant also argued before me that the suit notice was issued on 7-1-1999 (Exh.37) and it was received by the defendant on 8-1-1999, hence 15 days period was not over on 17-1-1989 and as such the suit notice is not legal in view of the provisions of Section 106 of Transfer of Property Act. However, once it is held that defendant's month of tenancy commences from first day of month, it is very clear that the suit notice Exh.37 is legal and valid. 14. Shri Borwankar, the learned Advocate for the plaintiffs argued before me that in view of amendment to Section 106 of Transfer of Property Act no importance can be attached as to by which date the tenancy has been terminated. Once it is proved that 15 days notice was given. In order to substantiate this proposition he has placed reliance on a case Prakash Ramaji Lende V/s United Church of Northern India **2004(1) Mh.L.J.363**. The relevant provisions of amended Section 106 of Transfer of Property Act is as under :-

106. Duration of certain leases in

absence of written contract or local usage - (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lease, by six months notice, and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub section, where a suit or proceeding is filed after the expiry of the period

mentioned in that sub-section.

It is pertinent to note that as per old Section 106 of Transfer of Property Act the words "expiry that end of month of tenancy" were appearing after the words "15 days notice". However, the said words have been now deleted in the amended provisions. So, as a result of the same now there is no substance in the contention of the defendant that his month of tenancy was not properly terminated having regard to the commencement date of his tenancy. In fact in the above cited ruling this Court (Coram:Bobde J) has held that in view of amendment to Section 106, Transfer of Property Act, requirement that notice must terminate the tenancy at the end of month of tenancy is no longer necessary.

15. The learned Advocate for the Appellant defendant has drawn my attention to a case Dattoapant Gopalvarao Devakate V/s Vithalrao Marutirao **AIR 1975 SC 1111** wherein it is observed that by computing the period under Section 110 of Transfer of Property Act the date of commencement has to be excluded. For this proposition there is no dispute. However, in the facts and circumstances of the case the said point has absolutely no relevance.

16. In view of the fact that by virtue of amended provisions of Section 106 of Transfer of Property Act, now it is not necessary to terminate the tenancy ending with the tenancy month. The Transfer of Property (Amended Act 2001 has made it clear that amended provisions shall apply to the notices already issued even prior to the amendment. So, having regard to all facts and circumstances of the case and position of law, I have no hesitation to hold that the suit notice in question was legal and correct and the findings recorded by the courts below on the said point are legal and correct. Thus there is no substance in this appeal. The appeal is dismissed with costs.

. However defendant is granted time till 30-4-2006 to vacate the suit premises.

(S.R.SATHE,J.)